

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-110073
	:	TRIAL NO. B-1002423
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
CONRAD ZDZIERAK,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 11.1.1.

Conrad Zdzierak appeals his convictions for one count of aggravated robbery and five counts of robbery. We conclude that his assignments of error do not have merit, so we affirm the judgment of the trial court.

Zdzierak was indicted for six counts of aggravated robbery, six counts of robbery, and six counts of having a weapon while under a disability. He pleaded guilty to one of the aggravated-robbery counts and five of the robbery counts, and the state dismissed the remaining counts. The trial court sentenced him to ten years for aggravated robbery and to five years for each of the robberies. The sentences for aggravated robbery and three of the robberies were made consecutive to each other and concurrent with the remaining sentences. The aggregate sentence was 25 years.

In his first assignment of error, Zdzierak asserts that his guilty pleas were not knowingly, intelligently, and voluntarily entered. Prior to accepting Zdzierak's guilty pleas, the trial court conducted a Crim.R. 11(C) colloquy. Zdzierak contends that his

pleas were not made knowingly, intelligently, and voluntarily, because he was on mood-stabilizing medication at the time of the plea hearing. But during the plea hearing, Zdzierak told the court that he was taking medication to stabilize his mood, but that the medication did not inhibit his understanding. Zdzierak also argues that his presentence investigation revealed serious psychological issues that indicated that his pleas had not been entered knowingly, intelligently, and voluntarily. But the court had found Zdzierak competent to stand trial. And the record demonstrates that Zdzierak understood the proceedings and the implications of his pleas. The first assignment of error is without merit.

Zdzierak asserts in his second assignment of error that he was denied the effective assistance of counsel. To prevail on this assignment of error, Zdzierak must demonstrate that his counsel's performance was deficient and that, absent his counsel's errors, the result of the proceedings would have been different. See *State v. Bradley* (1989), 42 Ohio St.3d 136, 142, 538 N.E.2d 373; *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052. Zdzierak claims that his counsel's performance was deficient because counsel did not properly explain Zdzierak's pleas to him and because counsel did not move to withdraw Zdzierak's pleas when the extent of his psychological problems was uncovered in the presentence investigation. But as we discussed above, the record demonstrates that Zdzierak entered his pleas knowingly, intelligently, and voluntarily. He did not dispute that he committed the offenses to which he pleaded guilty. We conclude that Zdzierak has not demonstrated that his counsel's performance was deficient. The second assignment of error is overruled.

In the final assignment of error, Zdzierak asserts that the aggregate sentence imposed by the trial court amounted to cruel and unusual punishment. "Where none of the individual sentences imposed on an offender are grossly disproportionate to their respective offenses, an aggregate prison term resulting from consecutive

imposition of those sentences does not constitute cruel and unusual punishment.” *State v. Hairston*, 118 Ohio St.3d 289, 2008-Ohio-2338, 888 N.E.2d 1073, syllabus. Here, the individual sentences are not grossly disproportionate to the six offenses to which Zdzierak pleaded guilty. We, therefore, conclude that the aggregate term imposed by the trial court did not amount to cruel and unusual punishment.

Although his assignment of error only challenges whether the aggregate sentence amounted to cruel and unusual punishment, Zdzierak also argues that there was no justification for the sentences, and that the sentences were contrary to law. We may presume that the trial court considered R.C. 2929.11 and 2929.12 when imposing the sentences. See *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, at fn. 4. And after having reviewed the record, we conclude that the sentences were not contrary to law, and that the trial court did not abuse its discretion in imposing the sentences. *Id.* at ¶14 and 17. The third assignment of error is without merit.

The judgment of the trial court is affirmed.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., SUNDERMANN and HENDON, JJ.**

To the Clerk:

Enter upon the Journal of the Court on September 28, 2011

per order of the Court \_\_\_\_\_.  
Presiding Judge